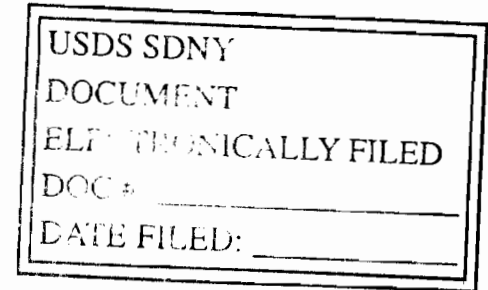


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JOSETTE LANG on behalf of Dorothy Morgan
(deceased),

Plaintiff,

-v-

MICHAEL J. ASTRUE as Commissioner of Social
Security,¹

Defendant.

No. 05-CV-7263 (KMK) (PED)

ORDER ADOPTING REPORT
AND RECOMMENDATION

KENNETH M. KARAS, District Judge:

Josette Lang ("Plaintiff") brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the Commissioner of Social Security's decision to deny her deceased mother, Dorothy Morgan, disability insurance benefits and supplemental security income ("SSI") payments. Following Morgan's death in 2003, the Commissioner accepted Plaintiff as a substitute party in administrative proceedings initiated by Morgan, and in 2005 the Commissioner's denial of Plaintiff's claims on Morgan's behalf became final. Plaintiff brought this action challenging that final decision. By Order dated November 3, 2008, this Court granted the Commissioner's motion to dismiss Plaintiff's claim for SSI payments, and denied the Commissioner's motion to dismiss Plaintiff's claim for disability insurance benefits for failure to join an indispensable party. Now before this Court is the Commissioner's motion for judgment on the pleadings dismissing Plaintiff's disability benefits claim pursuant to Fed. R. Civ. P. 12(c).

¹ Michael J. Astrue, the current Commissioner of Social Security, took office as of February 12, 2007. Pursuant to Fed. R. Civ. P. 25(d)(1), he is automatically substituted as Defendant for his predecessor in office, Jo Anne B. Barnhart, who had been named as defendant in Plaintiff's Complaint.

On June 23, 2009, Magistrate Judge Paul E. Davison filed a Report and Recommendation (“R&R”) recommending that this Court deny the Commissioner’s motion for judgment on the pleadings, construe Plaintiff’s opposition to the Commissioner’s motion as a cross-motion for judgment on the pleadings, grant Plaintiff’s cross-motion for judgment on the pleadings, and remand the matter for further administrative proceedings. (R&R 1, 10.)

A district court reviewing a magistrate judge’s report and recommendation addressing a dispositive motion “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see, e.g., Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at *1 (S.D.N.Y. Mar. 15, 2007). Under 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, parties may submit objections to the magistrate judge’s report and recommendation. The objections must be “specific” and “written,” Fed. R. Civ. P. 72(b)(2), and must be made “[w]ithin 10 days after being served with a copy of the recommended disposition,” *id.*; *see also* 28 U.S.C. § 636(b)(1), plus an additional three days when service is made pursuant to Fed. R. Civ. P. 5(b)(2)(C)-(F), *see* Fed. R. Civ. P. 6(d), as was the case here (R&R 10).

Where a party submits timely objections to a report and recommendation, the district court reviews *de novo* the parts of the report and recommendation to which the party objected. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Donahue*, 2007 WL 831816, at *1. “However, where a party does not submit an objection, a district court need only satisfy itself that there is no clear error on the face of the record.” *Donahue*, 2007 WL 831816, at *1 (internal quotation marks omitted); *see also Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008) (The district court “may adopt those portions of the . . . report [and

recommendation] to which no ‘specific written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” (quoting Fed. R. Civ. P. 72(b)(2)). “In addition, a party’s failure to submit an objection will waive that party’s right to challenge the report and recommendation on appeal.” *Donahue*, 2007 WL 831816, at *1.

Here, neither party has filed objections to Magistrate Judge Davison’s R&R. Thus, the Court has reviewed the R&R for clear error. Finding none, the Court adopts the R&R in its entirety.

Accordingly, it is hereby

ORDERED that the Report and Recommendation dated June 23, 2009 is ADOPTED in its entirety. It is further

ORDERED that the Commissioner's motion for judgment on the pleadings dismissing Plaintiff's claim for disability benefits is DENIED. It is further


ORDERED that Plaintiff's cross-motion for judgment on the pleadings is GRANTED. It is further

ORDERED that the Commissioner's decision is reversed, and the matter remanded for further administrative proceedings. It is further

ORDERED that the Clerk of the Court is respectfully directed to terminate the pending motion (Dkt. No. 27), and to close this case.

SO ORDERED.

Dated: November 6, 2009
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

Service List

For Mailing by Clerk's Office:

Kenneth R. Stephens, Esq.
The Legal Aid Society
199 Water Street, 3rd Floor
New York, NY 10038

Susan D. Baird, Esq.
U.S. Attorney's Office, SDNY
One St. Andrew's Plaza
New York, NY 10007

Susan C. Branagan, Esq.
U.S. Attorney's Office, SDNY
86 Chambers Street, 3rd Floor
New York, NY 10007

Copy To:

Honorable Paul E. Davison
United States Magistrate Judge